

The Grand CASE OF CONSCIENCE STATED, about Submission to the new and present Power.

O R,

An impassionate ANSWER to a modest BOOK concerning the lawfulness of submitting to the present Government.

By one that professeth himself a friend to Presbytery, a lover and embracer of Truth wheresoever he find's it.;

Although I love not contention, yet I desire satisfaction: that whilst I live amidst a tumultuous generation, and unquiet times, I may be delivered from a troubled spirit and discom'd minde; *A wounded spirit who can bear?* I was willing to have sat down in silence, resolving to have kept my conscience, as void of offence to others, so free from disturbance in it self, chusing rather quietly to suffer for not doing what was commanded, than knowingly to act what is (at least to me) unlawfull: such a *Liberty of Conscience* I conceive none will deny me. But since that Book came to mine hands, I (although unwillingly) undertook this task, not only out of an earnest desire I had to finde out truth, but for the unusuall modesty of the Tract it self, knowing that the sowest corn is best winnowed in a gentle gale; a tempestuous winde blowes away chaffe and corn too.

I shall take a brief view of the book, and submit what I shall speak to the Authors judgement, *A Declaration hath been lately published, &c.* Indeed there was such a Declaration published, which I desired with much earnestnesse, and read with some deliberation, expecting to have found the very quintessence of reason, and strengt of argument, whereby judicious men might have been wholly convinced, and abundantly satisfied; but my scruples were not answered by it. For suppose that had been proved, which was there much argued, That the government of a free State were in some respects more convenient than that of Monarchy; that might have been a prevalent argument to an irregular people, who were (*de novo*) to constitute a Government, not to those, who had before an antient form suited to the people, established by Law, confirmed by Oath, and engaged to by the severall Declarations of them who are so solicitous for the altering of it. Surely if convenience or inconvenience only can break a promise, and disengage an Oath, *David* was much mistaken in the 15th Psalm, and others may be easily cheated, who ex-

best ready performance of, not needlesse disputing about Oaths, stand bound to them. What is there said concerning Declarations [That the King and Commons were of that mind when they made them] may serve their turn at the present, but would equally serve others turns for the future; For by the same reason, when those that penned and published that Declaration, shall borrow money of men, and declare to pay them, imploy Souldiers with an engagement to satisfie them, people may suspect that their mindes may alter, and then (by this rule) their former Declarations will be of no strength.

What is further spoken in the Preface for a lawfull obedience to an unlawfull change of Government, will be touched on in the further prosecution of this discourse. It is said [The Apostle commands obedience to higher powers, Rom. 13. and thence it is inferred, that he speaks not in that place merely of power or authority abstracted from persons, but of persons clothed with that authority.] The Apostle speaks there directly of Authority, of men only in subordination to that Authority; no further than as the executioners of that power, because it is impossible Authority should be exercised, but where men are to manage it. The Apostle in that place requires submission to legal Authority, by whomsoever executed, not to any men commanding by an illegall power.

Higher powers are there expressed indefinitely, not pointing at any particular government: In a Monarchy, an Aristocracy, a Democracy, the people under the severall constitutions may, yea must, by the Apostles command obey the higher powers, those who by their legal constitution are in Authority, not in person, and them: there is a law of nature, that will make man obey a power if it be just, but the injunction of the Apostle (there) is only to lawfull Authority, and the Authour of that Book knows, that those only can be the higher power, or legal Authority of any Kingdom, which the constitution of that Kingdom makes such, and that only can exact obedience according to the Scripture rule. Now what the Higher powers of England are, by the constitution of this Kingdom, is sufficiently known.

The Apostle commands wives to submit to their husbands, Ephes. 5. 22. surely the injunction is for obedience to husbands, *quæ* husbands, not *quæ* men, indeed not abstracted from their persons, because it is impossible the authority of an husband should be submitted to, where a man is not to exercise it: But should a stranger come to anothers wife, and call himself husband (having before either imprisoned or slain the rightfull husband) and require submission, I scarce think the Authour himself (especially if he be married) would presse for obedience to such an usurped power: such a woman may be forced, and overpower'd, but to submit to him as an husband, were a sinne.

What is there urged as the great argument to prove the lawfullnesse of obedience to the present Government, hath been my main defwative (*viz.*) the Apostles command to obey higher powers for conscience sake: Had I been convinced that the King in his person had been the higher powers of England, and that his personall command by the Apostles rule exacted undeniable obedience, although he had been visibly doing what we suspected, and palpably introducing what we feared, I should have

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...for conscience sake. The great inducement I had to adhere to the Parliament, was (besides the hopes of better reformation) that thorow conviction that lay upon me, both by mine own reason, and Parliamentary practices, that the two Houses of Parliament, in case of the Kings absence, weaknesse or refusal, had in them such a part of the *higher powers*, and supream authority, as to defend, and preserve the people without, yea against the King, doing, commanding or exacting any thing besides or against the law. And this is that main block, at which I stumble in yeelding obedience to this new power, because I am yet convinced, that they are not the *higher powers* of our Kingdom, to which the Apostle requires obedience.

I acknowledge a government may be altered (although I think it not safe, but upon urgent and evident necessity) to which being altered obedience is required, but it must be done by the *higher powers* still, whom we ought equally to obey in submitting to an altered, as a continued form; but for any party by force to lay low the *higher powers*, and to exact obedience as to the legall Authority, is to me a sinne.

I am not ignorant what pleas there may be from inconvenience in such a doctrine, but according to the light I have, where lawfull or unlawfull are in question, their convenience and inconvenience must keep silence.

It is to be observed what is spoken by the Apostle in the same place, *the powers that are, are ordained by God*: to which in the second page of the book is a little addition, viz. *Rulers and those that were in authority were ordained of God*: the Scripture enjoins obedience to powers, to men only as intituled to those powers: the authority was ordained by God, not the Rulers, they were constituted by men, the power may be Gods Ordinance, when the deputing of persons to the exercise of that power may be (at most) but Gods permission: nay, that men in Authority (Rulers in the Apostles expression) are to be obeyed no further then as acting according to that Authority, is the judgement of one much used by the composer of that book. When a Tyrant shall offer violence to his private Subjects. which they can by no other means avoid, they may defend themselves and theirs against that Tyrant as against a thief; when are men properly called tyrants, but when they either usurp or exercise a power contrary to the law and usage of those places where they rule? when a conscientious obedience is required to the Authority, but not to those, who by their own will, or procured force, either usurp or exercise a power besides that Authority.

Should we grant that men assuming to themselves the place and power of Magistrates, by what right or means soever they came by it, must be obeyed, surely it would be the greatest inlet to tyranny in the world, and the speediest means of destroying states that could be invented: for then should none govern in any Kingdom any longer, then their swords and their strength could bear them up.

Thus much I shall yeeld, That when any shall usurp Authority, by whatsoever title or force he procures it, such may be obeyed in reference to their power, while they command lawfull things, but not in reference to Authority: A man being overpowered may yeeld for his own safety, but to submit to that usurped power, as

Rom. 13.1.

Page 3.

Disjunctio

est inter

statum quo

per est

inter

omnem

potestatem

Parvus in

13. Hoc

Subditum

privatum, & Ty-

ranus tamquam

latro in loco

faciendi

& ipsi

testamentum

marianum

remaneat

religionem

et

potestatem

et

Tyrannus

contra

& Tyrannus

in

Parvus

to

Act. 13. 15.

to the legall Authority of that Kingdome where it is, is to assert that as lawfull, which is but usurp'd, and in the Scripture language *to make a lie*.

From this I shall take a just occasion to speak to those instances there urged, from obedience to whom, the argument is drawn to prove the lawfullnesse of our submission now.

Pag. 2, 3.

Concerning *Claudius Caesar* and *Nero* which are mentioned, pag. 2, 3. how they came in by force, yet were obeyed by the people, I shall not trouble my self nor the Reader with any tedious search into, or large recitall of the story, but take it as there laid down, and give a brief answer to it.

But before I fall upon a plain answer to what is there fallaciouſly urged, and shew the insufficiency thereof to prove that for which it is asserted: I conceive there will appear such a disproportion between the quoted instances and our present case, that should we grant all the premises, yet the conclusion would not directly follow to prove the question. The most that can be asserted from those examples is, That people did obey a supream power as exercised by those who had no true (at least but a dubitable) title, when the same form of government was still continued, for so it had been for many years before, during the reign of 4 Emperours, yea, such a government which was the pristine constitution of that place, it being Monarchicall for above 440. years, till *Tarquinius*, about the businesse of his son with *Lucretia*, was rejected. Whether party had or pretended most right, and the best ends in their changing of the government, either *J. Brutus* from, or *Julius Caesar* to Monarchy, I shall not dispute: nor shall I decide, whether God might not justly give them to see the evill of a change, who (it may be) chiefly out of a desire of change, would wholly alter a constituted form. But this is not our case: The submission of people now, is not grounded upon a suggested scruple of a dubious title to the same, but upon an apprehended illegality of the new and needlesse establishment of another government: It is one thing, and as in it self more lawfull, so to people less scrupulous, upon a pretended title to usurp the exercise of an established Authority: another, and as in it self less just, so to people more doubtfull upon pretended apprehensions to eradicate a lawfull Authority, and illegally to lay low those which legally are the higher powers of a Kingdome: In the one, people lesse able to examine titles, submit to the established government of that Kingdom where they are, and this is sufficient to yeeld obedience, that they know not who hath the right: In the other, they must give themselves up to a new-fashioned modell illegall to them, because not the constituted powers of that place, and this is enough to withhold Allegiance, that they know such have not (nor pretend) a Title.

Now to the instances themselves, to see how farre they prove the lawfullnesse of our submission to a change of government, although the change be believed unlawfull.

After the death of *Caius Caligula*, the Consuls and Senate of Rome entred into a consultation, how they might restore the Common-wealth to her ancient freedom, I think this argument will take in all that is therein spoken: if the people of the Roman Empire did submit to the power of *Claudius* and *Nero*, who by force

* *Julius Caesar*.
Augustus.
Tiberius.
Caius Caligula.
 b *Principio Re-*
ges ibi septem
imperarunt, an-
no ducentis
quadragesimo
quatuor. Slei-
dan. de 4. Mo-
narch.

force were put upon them, then the people of *England* may lawfully submit to a change of government, though believed unlawfull: but they did submit, therefore these may, I will finde no fault with the Syllogisme, because it is of mine own making, although it be the very summe of what is urged: what equivocall terms there are whereby a spirituall eye would quickly see four terms (at least) in it, I shall discover in mine answer to the severall propositions.

In the first Proposition, it being hypotheticall, I shall deny the consequence: For 1. A People may possibly do what is not in it self lawfull either for themselves or others to do, *a facto ad jus non valet argumentum*, had the author proved their submission legall, it had been more urgent. Indeed it is said at the end of that paragraph, *We see Rulers put by souldiers into that power which is said by the Scripture to be ordained of God, and even to these Rulers men must be subject for conscience sake.* But the Apostle doth not command obedience to these men, but to the powers, nay not to any men, but as commanding according to those powers (as was said before) nor is it materiall who put men in, nor what men are put into powers, if they are the powers that are ordained of God: those that command according to that Authority, must be obeyed: and whatsoever the souldiery of *Rome* did, had the souldiery of *England* (in this tacitely pleaded for) observed that doctrine before, we had not been (I think) disputing this question now. But 2. What might be lawfull for the people in the Roman Empire, may not be lawfull for the people of this Kingdome: I finde not in any History that ever they were sworn to a particular government as we have been: Things in themselves indifferent are made necessary, when by an oath engaged to. But of that more afterward.

Pag. 4.

To the Minor proposition, I shall say 1. That those mentioned had (at least seeming) titles to the Empire. Indeed it is agreed by all Historians I have met withall, that they were first encouraged by souldiers: but what iniquity is in that, if they might pretend a Title? The very end of power and strength is or should be to conserve and recover just right, we have alwaies acknowledged it lawfull and expedient by force of Arms to acquire a rightfull possession illegally detained; But I could wish that this story had been printed and read by the sword-men in this kingdome five moneths agoe, that they might but have thought whether it had been greater honour to be recorded as men, that should guard a King of a doubtfull title to the Crown, or to be storied as men that should bring a King of an indubitable right to the Scaffold.

I will not here dispute by what title, or according to what law *Julius Caesar*, nor yet his successour *Octavius* assumed the Empire, but when that government and those governours were received, and acknowledged by the Senate, it became lawfull to that people. Although Conquest be no true Title, nor durable tenure any longer then strength can keep it, yet compact upon that Conquest, gives a title to the Conquerour, and engageth submission from the other party to those rules resolved on at, or given out according to that agreement.

Tiberius from whom indeed both *Claudius* and *Nero* had their government, did not only for a great part of his time, do all he did by the advise of the Senate, but would (at least seemingly) be chosen by the Senate, as not contented secretly t

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*Tiberius Augu-
stus & pri-
vatus & ee-
ter, & filius
adoptivus ad-
modum in vi-
tus, ut pra se
ferebat, & vix
tandem exora-
tus a supplice
Senatu princi-
patum accepit.
Sicilian. de 4.
Monarch.*

*Tiberius max-
imos dolores &
gemitus simula-
vit principatu
tanquam onero-
sum servitutem
recusans. Pezel.
Mel. Hist. par.
12. Pezel.
Mel. Hist. part.
21.*

*Tacitus Annal.
lib. 1.*

Pag. 3.

step into a government either by the earnest engagement of his mother, or by the fond adoption of *Augustus*, but would have the call and election of the Com- mon-wealth too: now here surely was a lawfull title, if the consent of the people could make it lawfull, although (it may be) not in it's first acquisition, yet in it's after establishment: and *Claudius* deriving his title from him, why should not peo- ple obey it? yea, me thinks the Authour of that book intimates a title that *Claudius* had, where he saith, *pag. 3. Claudius being frighted with the news of Caligula's death, and fearing himself might be enquired for, upon suspicion withdrew: had not he been the heir apparent to the Empire, what ground of fear, or what cause of withdraw- ing? nay, if he had not been looked on as the rightfull successour, why should the souldier primo intuitu salute him by the name of Emperour?*

For *Nero* he descended in a direct line on the mothers side, from *Livia Augustus* his wife, and although *Britannicus* was the naturall son of *Claudius*, yet *Nero* (by *Agrippina's* means) was his adopted son for the Empire, and brought to the Senate, where it was consented unto, that he should have his *rogam virilem*, and he called Prince of youth: it being their usage, as far as I have observed in the story, that an Adoptive title assented to by the Senate, hath commonly been acknowledged, when a lineall succession hath been rejected: yea, the Authour seems to grant a kinde of title to *Nero* too, where it is said, *pag. 3. that the sentence of the souldiers was followed by the consent of the Senate: if the Senate had any share in either constituting or de- claring a King, Nero's title was hereby established.*

But what is this to our case? A rightfull or doubtfull heir was brought by souldi- ers to the Senate, who among themselves were contriving to alter their govern- ment: This heir was received by the Senate, and upon that submitted unto by the people: But doth the Authour think that if the Senate had declared and acknowl- edged, yea, promised to preserve the Title of a rightfull Prince, and the souldiers by the advice, counsell, or assistance of some party in this Senate, should imprison or slay their Prince, and take away the Major part of the Senate, only because against their actings, and this minor part relist should alter their government, yea, make themselves without the consent of the people their Rulers, that then the people would or lawfully could have submitted to them as their legall and rightfull govern- ours, nay, would not rather have resisted them, as not being those higher powers, whom they ought for conscience sake to obey?

Indeed had the King for some reason hid himself (as *Claudius*) or for other rea- sons absented himself, and the two Houses of Parliament legally elected, and freely sitting (at such a time esteemed) the higher powers, contrived a way for the altering the government, although I should not have proclaimed their wisdom, yea, should have bewailed their sin, in respect of the many ties and bonds of Declarations and Oaths upon them, I think I should have submitted to their power, yet I would not for my Oath's sake (had I liked the thing) have acted in it. In which I think I celd more then many Anti-Malignant men in *England* will do: yet how far from our case this is, what hath been spoken will testifie.

But 2. Had the instance been of *Julius Caesar*, who by meer force and violence, without the least pretence of Title acquired the government, which had better sui- ted

ted our business, yet I should say, that what submission the people yeelded, and what commands he gave, were in relation to a power which he by force had gotten, and did exercise without any pretence to a legall constituted power, till received and acknowledged by the Senate.

I confesse should these Rulers now in our Kingdom command submission to them, as to a conquering party, and acknowledge they did by power exercise, what by force they had gotten, I should in that sense submit to them, because not able to defend my self against them: but they call themselves the legall Authority, and *higher powers of England*, under which notion I cannot submit, because positively to obey what is thus commanded, what soever secret reservation I may have, I doe and must asert their power as lawfull, and their Authority as the legall Authority.

By this I shall fitly descend to those instances of our Nation, to which what hath been already spoken, will give (*me judice*) sufficient answer: For Pag. 45.

1. What submission was given to the Conquerour, was yeelded as to a forc'd power, untill by after-compact it was acknowledged and made legall.

2. What was practised by the successors mentioned (besides the acknowledged force in their unrightfull acquisitions, and violent exercise of power) it was only upon difference of Title, *which people may not be able to judge of*, as the Authour saies, Pag. 9. pag. 9. but amongst us, here is an alteration of government, where a change only seems to be asserted, no Title at all pretended.

3. What is spoken of *Hen. 7.* may be enough to answer the argument drawn from him and the rest too. Although the Title might be unjust, and the power illegally gotten, yet when the Title was acknowledged, at least, confirmed by Parliament, and the Laws whereby he (or they) should rule, were enacted in a Parliament, that did engage the people to an unquestionable obedience, the constituted *higher powers* then commanding, to whom the Apostle requires obedience: for although a Parliament (such I mean, which by the known law and continued usage of the Kingdom as a Parliament) should acknowledge or do any thing civilly evill (I mean in reference to the State) it is lawfull and just in respect of the people, and engageth obedience, which I think will be a sufficient excuse for peoples *yeelding obedience to their laws*, not only because then enacted, but since confirmed by *the higher powers of our Nation*: although in the mean time upon the same ground they rest *unsatisfied* in the lawfullness of submission to the present power. Pag. 5.

I might adde, that what *the whole body of a Nation did, if illegall, doth not engage our practice*: for we know Papists (and such they were all who submitted to the fore-mentioned Rulers) make no conscience of denying a rightfull Title, nor yeelding to an illegall power, when they may but probably carry on their own design: but what is spoken already will satisfie, and I had rather give a rationall answer, then question the wisdom or honesty of Ancestors, where it may be avoided. Pag. 6.

What is urged from the Casuists and *Parans* (although I am not bound *jurare in verba*, being of Dr *Moulins* his minde, rather to like one argument then ten Authours) I shall agree to in that sense, in which I conceive they delivered it, to Pag. 6, 7.
submit

submit to such power as forced, not to their Authority as legall, unless it be
 an Authority which by constitution and usage are the *higher powers of our Kingdom*.
 The Author after the example of others, proceeds now to give some reasons
 his own, which I shall also endeavour to examine, and so far as they carry strength
 and truth (as least to me) shall submit: where otherwise, I shall give mine on the
 contrary.

Page 7.

Indeed how can it be otherwise? For when a person or persons have gotten supreme power, and by the same excluded all other from Authority, either that Authority which is thus taken by power must be obeyed, or else all Authority must fall to the ground. Persons may indeed get themselves the greatest strength, and in that sense may be submitted to, but they cannot illegally get themselves the legall power, nor can they exclude others from their Authority, although by force they may keep them from the exercise of it. A man may be a man, yea a living man, although by the violence of disease, he may be kept from outward actings. An husband may be a husband still although imprisoned and thereby kept from the exercise of his duty to his wife. A Parliament may be a Parliament still, although by violence kept from sitting and executing their Authority. I am so far from thinking that disobedience to such power will make all Authority and government fall to the ground, that I believe submission to such will quickly lay all Authority waste: for by the same reason that we obey this altered government and usurped authority now, we must obey any other suddenly, if another party get more strength, and what an unsettled state and unknown Authority we should then have may easily be judged: nor do I think the Author himself would be of the same minde, should the Prince with a potent army get the power into their hands. Surely were this doctrine true, those renowned men shall be rased out of the Calendar for Saints, that opposed the Kings power in Ship-money: nor must such be sequestred who under the Kings power formerly did lend or give whatsoever he required, whether men, money, horse or arms: nor these put out of the Parliament, who obeyed him in sitting at Oxon: nay, nor himself neither put to death for doing what was urged against him, if men in power howsoever they come by it are Rulers ordained by God, and to be obeyed for conscience sake.

Page 7.

If Confusion be worse then titular Tyranny, I wish that seeing we had no titular tyranny, we had had no confusion neither: and I should be glad that confusion may befall (if any) only such, who in this Kingdome have been the greater introducers of it, either those who acquire and assert, or those who cannot receive or submit to an usurped government: for although the end must not be destroyed for the means, yet he that destroys the means in it's tendency to the end, will scarcely preserve the end at last.

Page 8.

If a Masters mate had thrown the Master over-board, and by power would suffer no other to guide the ship but himself, if the mariners will not obey him commanding awright for the safe guiding of the ship, the ship must needs perish, and themselves with it. I doubt here is a fallacy, and this case will not concern our question, for I suppose, although I am not so well skilled in the discipline of mariners, as to know that a Masters mate hath a kinde of Title to the government of the ship in case of the Masters miscarriage,

which is not our condition: But suppose him to have to chide, or that the question somewhat nearer our case, That if a party of the Sea-men should throw the Master over-board, and assume to themselves the government of the Ship: I shall then answer, That if that Mate or this party having the greater strength, should by power enforce and exact obedience of the rest, these ought for the safety of their own lives, although not to obey the Authority, yet to do the commands of the enforcing party, and if ever they come ashore, to doe what they can to bring such unworthy persons to condigne punishment, who, besides the murder of the Master, would so basely hazard the ship too; But if that mate or party should command the Sea-men to obey them as the rightfull Master, I think (although with submission to better judgements) they ought not, although for the safety of their lives thus to obey them. It is better to lose a naturall life, then a quiet conscience, and a spirituall soul: The greatest advantage will not warrant the least evil. In such a case it would easily be judged both by God and men, to whose fault the losse of the ship should be imputed, either to them that did unjustly require, or those who dared not unwarrantably to do an unlawfull thing. I know not what the sodain fear of unavoidable death might make such men (*de facto*) do, and I can easily think what harsh censures their hazarding or losing their lives upon such refusall, may bear from rash and lesse considerate men, as an empty product of meer peevishnesse: but I am confident that a Synod of religious and intelligent Divines would conclude, that (*de jure*) they ought rather to adventure the losse of all, than call him a lawfull, who is but an usurped master, which they must by yeelding to his or their commands under that notion.

Whereas some speak of a time for settlement, they indeed do rather speak for a time Pag. 8.
of unsettlement, for they will have an unsettlement first and a settlement after. If I mistake not the desires of those who withhold submission to the present power, the Authour of that Book is mistaken in his apprehensions of them: That they desire a settlement (I think) is true, but that they desire an unsettlement first, is besides my thoughts of them; I know it is the grief of their souls, and causeth sad searchings of heart, that ever they were brought into such unsettlements, and thereby put upon such racks of conscience as these are. It is not unsettlement but a deliverance from unsettlement they long for: I scarce see how we can be more unsetled then now we are: Indeed being unsetled, we would use any means for a settlement, although for it's procurement our unsetlednesse were more unsetled; If a man be at the rivers brink, I would advise him to keep out of the water, but if at once he leap into the middle of the river, I should perswade him to come to the bank, although he wade through much water to come thither: I would counsell a man to prevent distempers, but when the disease is already contracted, I should prescribe some Physick for the safety of his life, although for the present it should more discale him.

What is spoken of the former Scriptures and Casuists in the same Page, I shall refer to what was before answered.

But it is asked: *Whether that may not be called a settlement, how soon soever is* Pag. 8. 9.
is, when there is such a way settled, that men may have justice if they will, and may enjoy that main end of Magistracy, to live a peaceable life in godlinesse and honesty? To

Speak of what justice some have had at *Westminster*, since the unsettlement of our times, or what to be expected, when Colonels appear as parties with their arguments by their sides before Committees, (an argument too often used in the House too, as I believe the Gentleman knows,) where to engage a bustling daring Colonel is to carry a cause: as also what peaceable lives men live, when the souldiers having put other men in power in the State, put themselves in command in mens houses: and what godlinesse and honesty may be looked for, when blasphemy must be tolerated, wickednesse must not be punished, when in the mean time godly men (if but of a contrary judgement, a liberty of conscience formerly pleaded for) are made offenders for a word, would be too large a field to walk in, and besides the swelling of this tract, but give too wide an occasion to further contests. But this shall suffice, that the gentleman a little begs the question in calling it justice, for although men may have, or might expect, what he calls justice, viz. things in themselves just, yet if he grant, as I have proved, that Authority illegall by which they act, what they do or is done by any under that Authority, although in it self just, yet is not properly justice: Judgement (for I conceive the Authour means *justitiam distributivam*) is then only just, when it is exercised by the *higher powers*, the legall Magistracy of that Kingdome where it is acted. The Hebrews expresse justice by that word, which they likewise use for the usage and custome of that people, that are concerned in it.

*Ut judicium sit
actum justitiae,
requiritur ut
procedat ex
autoritate
presidentis:
quando tunc
judicet de his de
quibus non ha-
bet autoritatē
dicitur judiciū
usurpatum.
Aquin. 2. 2.
60. cap. 2.
שֹׁפֵט*

Exod. 21. 9. &
Joth. 6. 1.

Another argument the Authour useth is, because *People cannot judge of Titles*: when they cannot judge, then an usurped Title is true to them, and will exact obedience: but if this be an Argument, then (for *contrariorum eadem est ratio*) when Titles are visibly unlawfull, people are disengaged from obedience. This is our case, where there is not any pretence of Title.

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But some say, *There are Oaths that justify disobedience to the present government*: There are indeed severall Oaths that engage us to the continued observance of our formerly established government, and then how far they justify disobedience to this, let the Authour judge. *That Oaths are sacred bonds and reverend obligations, and where they do not themselves leave or make us free, we are not to cut or break them in peeces*: I shall equally assert, and could heartily wish it had been as truly practised in the Kingdome as plainly spoken in the book: But seeing there are indeed (as the Authour affirms) *concerning these, faults on both hands*, let us a little examine the faults he mentions, and see whether there are not other faults too, that he speaks not of.

Page 9.

On the one side the slighting of an Oath, &c. This is a fault indeed: Oaths and Covenants are the strongest engagements, whereby we can binde our selves either to God or man, if these come once to be slighted and no longer observed, then they may conduce to the palpable advantage of those that made them, I am afraid that may justly be written upon the door-posts of *England*, what was set in the front of *Dauids* song, *Psa. 12. 1. 2.*

I am loth to misjudge any person, whom I finde so modest, else I should fear that this fault was purposely argued, the more secretly to insinuate another, though not under the name of a fault: It is said, *We finde some part of the Covenant to speak of all the daies of our lives*: as if some part had been but of a temporary engagement:

but

but if I mistake not, the Covenant did in every part of it oblige us to a continued observance of it: we did not swear constantly to keep this part, or that clause, but all our lives to keep this Covenant, which is known to comprehend every part of it.

True it is, that the obligation of some things end, because they can no longer be kept, as that of the Kings person &c. I grant that the obligation of a people to any thing ends, when that thing obliged to, necessarily, and in its own nature ends; but if men shall by violence put an end to the thing, that thereby the obligation may end too, I doubt such will be esteemed by God as Covenant-breakers; I do not think, that he breaks his Covenant, that doth not preserve the Kings person, when he is dead; but I think he is guilty, that did not endeavour to preserve it while he was living; had the Covenant, in that part, been observed then, for all that I know, it might have obliged now. A woman promiseth to be faithfull to her husband so long as he lives, but if she, out of love to another man, shall lay violent hands on her husband to end his life, that thereby she might marry another, I believe she would scarcely be thought to have performed her promise. A Tenant bargains with his Land-lord to pay him rent for his house, so long as he lives in it: but if he through malice shall pull down the house, that he cannot live in it, and thereby to extinguish his bargain, it may be easily thought what determination the Law would make in such a case. Pag. 10.

What is spoken here of the Kings person, might as well have been spoken of any other part of the Covenant: It is Covenanted to preserve Religion, but if those that made the Covenant should by force extirpate, or by deceit undermine Religion: would the Authour think himself or others disingaged from that part of the Covenant, or rather look upon himself as bound to preserve it, while it hath a being? If this liberty should be given, no man would keep any Oath any longer, than he saw good, if it were in his power to put an end to that thing to which he is obliged. But let's see what faults are found on the other hand.

But on the other side there are other faults: such are the urging of an Oath or Covenant against enemies, and not against friends in one and the same action. In this I am wholly of his judgement, and could wish that he had instanced in some things, whereby I might have guessed what aim he had taken, and against what he had levelled it. As I would not have any unequally excused, who are equally guilty, so I would not have him free from blame, who imputes guilt to one, when another shall be connived at, or encouraged in the same thing.

In that clause of bringing Delinquents to condigne punishment: If the Covenant engage to bring one to punishment, that raised arms against the Parliament in *Kent and Essex*, why not another that raised arms against the Parliament in *Oxfordshire and Berks shire*? If according to our Covenant we should preserve the privileges of Parliament against a malignant party, that would have taken away but Five Members; why not against an Hereticall party that took away above two Hundred? If one party be charged as guilty in not obeying Orders of, but offering violence to the Parliament; why should another be excused as faultlesse, whose disobedience was more manifest, and whose violence was more palpable? or if not altogether so, yet (as the Authour) a slight and diminishing charge of Pag. 11.

it upon one, and a vehement and aggravating charge of it upon the other.

Pag. II.

Another fault may be, a stiffe insisting on one part, and a neglect or at least silence in another part. This is not alwaies a fault, for when there is no occasion given to speak, silence is no evil; One part may be in more danger to be broken than another, when a more violent asserting, and stiffe contending for that part is more necessary. If I had two children, the one at home in safety, the other in imminent danger, that I were more earnest and industrious for the saving and preserving of this, doth not at all argue lesse love or care to the other. But to take it in the best sense, to pretend much care in the keeping of one part, and in the meantime, to neglect another, I think a fault. As when men are seemingly violent against Popery and Prelacy, yet very indulgent to Heresie and profaness. When men shall plead Covenant in the preservation of subjects liberties, yet forget their Oath for the safety of the Kings person in the preservation of Religion; which in respect of the Covenant are of equall concernment; for although it be pleaded by some, and granted by all that Religion, yea asserted by others, that the subjects liberties are of greater concernment than the Kings person, it must be *ratione materiae*, not *ratione iuramenti*, for in that regard, we are equally obliged to one as the other.

Pag. II.

As also when by event two parts of it came to be inconsistent, to choose and enforce the keeping of the higher and lesse necessary part, and to give way to the losse and not keeping of the greater. Here is to me a *falsum suppositum*; I think it a sinne in any to enjoin, and wickednesse in any to take a Covenant for the doing of two things that are or may be inconsistent; nor do I know what parts of our Covenant are such; when the Authour makes such appear, I shall bewail my sinne in taking it. If it be by him meant, what is talked by others, (*viz.*) That the safety of the Kings person, and the preservation of Religion are inconsistent, I must declare my dissent in this; for I am yet convinced, that both the truth and honour of Religion might have better been preserved by the safety of his person, and the continuance of our Government, than hitherto it hath been, or for all I see, like to be, by the altering of the one, or taking away of the other.

Pag. II.

There is another, in racking an Oath or Covenant, to make it speak that which is meant not. I will adde, there is another fault to stop the mouth of a Covenant, and denying it to speak what it would. Nay, there is yet one more, when men shall put what interpretation upon Covenants they please, or reserve to themselves a power to make any other interpretation upon them, than what the common and naturall sense of the words in which they are taken doe afford. Oathes ought to be their own interpreters; we may deceive men, but God is not mocked.

But to come to what I conceive is the main end of what hath been hitherto asserted about Oathes; *To consider whether there be any clause in any Oath or Covenant, which in a fair and common sense forbids obedience to the commands of the present Government and Authority.* There is in the solemne League and Covenant, that which engagerth to another Government, and then what forbids obedience to this? In one clause we solemnly Covenant to preserve the Person, and not to diminish the just Rights of the King; had his Person and just Rights been preserved, his Government could never have been attempted; but seeing that cord is broken

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ken (*unhappy blow that strook it asunder*!) is there yet no bond will hold us? yes; we do in the same clause faithfully promise to preserve the Law of the Kingdom, and surely to change the Government is to alter the *fundamentall* Laws of the Kingdom; if we are bound to preserve our Law, then that Government that is established by Law; nay yet further, In the same place, we doe swear, yea and call the world to witnesse it, that we will not diminish the just Rights and greatnesse of the King: Is not a mans right as much concerned in his Heirs inheriting, as in his own enjoying what legally belong'd to him? Is it not a mans undoubted right to have his lawfull Heirs succeed him in his lawfull enjoyments? But now by this Government the Kings Heirs are wholly divested of any possession, and absolutely debarred of that right, which by the usage of the Kingdom belongs to them.

Much lesse when no other can be had (as the Authour) I do not yet see impossibility in having another, truly I think, if the Covenant had been strictly observed, we had never had this, and if it were yet carefully performed, we might quietly have another Government, such under which godly people might live with more comfort, and lesse scruple. Pag. 11.

If it be said that in the Oath of Allegiance, Allegiance is sworn to the King, his Heirs and Successors. If his Heirs be not his Successors, how doth that Oath binde? either the word Successors must be superfluous, or else it must binde Successors as well as Heirs, &c. If I should grant that the word *Successors* were superfluous, it would not be the only superfluous word in things of that nature; or that it is an exegetically expression which is not unusuall in all writings both Divine and profane, the more fully to expresse the same thing by two words: *His Heirs and Successors are conjunctive*, which must necessarily imply, that his Heirs according to the usage of this Kingdom ought to be his Successors: so that it can binde to no Successors besides the Heir: Indeed should the Line extinguish, then the legall Successour were to be obeyed by that Oath, and yet that too in the continuance of the Government, for he is not properly a Successour, unlesse in the same form of Government; for *without asking Lawyers and Learned men*, he is properly a Successor, that succeeds any man in the place where he was. If the Agitators in the Army should depose the Generall, and order the Army according to their wills, would they be justly called his Successors, when the frame of their Discipline were altered? This seems partly to be acknowledged by the Authour in the same page, where he instanceth only in those for Successors, which succeeded in the same Government, and saith *that the word Successour is taken for him that actually succeeds in Government*, I conceive it must be meant, when the same form still is continued, else what he asserts, and the instances he names, would hold no proportion. Pag. 12.

But there is one engagement to the former Government yet lies upon us in reference to our Oaths, which is mentioned either in that (before named) or in the Oath of Supremacy, *That no power on earth shall deter or absolve us from the keeping of it*, If so, I would but humbly begge the Authour conscienciously to judge, whether the force or fear of any party, were they stronger than they are, should affright a people into a submission to any other Government, then that to which they have thus sworn.

I may take the same liberty to propose a few short, yet considerable *Quæres*. While the Son is in the same posture in which the Father was, how comes this Oath at this time to stand up, and plead for disobedience in regard of the Son, that was asleep and silent in regard of the Father? I do not know in what one title this Oath is more urged for the Son, then it might have been, and was for the Father; unless that now there is more need of pressing it, because in the Sons daies the Government is altered; in the Fathers, it was (at least) promised to be continued. Those, who were against the irregular actings, the Court-faults, the wicked Counsels of the Father, were for the safety of his person, the preservation of his Rights, and the continuance of his Government: And now the same persons that are for the Rights of the Son, and the continuance of the Government, are as much against the vices and counsels in and about him, as about the Father. Besides it might be said, that the Father was not opposed, untill there was a Parliament, that being the legall means in our Kingdom of resisting Arbitrary and extra-legall power; the King in the intervalls of Parliaments being the chief officer, not to be resisted by private subjects: And certainly I think, were there now a Parliament sitting according to the constitution of *England*, and the Received to the Crown, should act any thing against the known Law, and the kingdoms safety, those who are now for the reception of the Son, and for the performance of their Oaths, would as truly and conscienciously (according to their Covenant) join with them against the exorbitancies of the Son, as they did against the evil of the Father: only I believe they would expect some security, that his Person and rights (parts of the Covenant) should be better preserved and lesse diminished then his Fathers were.

Besides what hath been spoken to the book, I might adde also one small *Quære* about altering the government: Whether in such an alteration there is not necessarily required, either the generall consent of the major part of the people, or at least the major part of their trustees? if so, what right have these men to do, who now act in it, some of them being the Trustees of no people, having no election, others who were legally chosen denied their liberty? May not any number of people (there being no known Law nor constituted rule for this transaction) by the like reason conceive, and (if they have strengta) alter it again to morrow? But if they will (which is but equall) give them liberty of dissenting from their government, whom they deny the liberty of delating or consenting to it, I shall be free.

Whether there be any Scripture example or prudentiall rule unnecessarily to oppress; and, where it may be avoided, to rack the tender consciences of unquestionably godly men, not only when they are the major part, and most judicious Christians (both of Ministers and People) and most likely to know the truth, but when they are the least strong, and most discountenanced, and therefore unlikely to be byassed by any private Interests? Indeed those who side with the strongest party, lye under groundd suspicion of having particular ends, who can turn any way, to any party, where they may get the best places, the greatest preferments, and the largest rewards: such many have received, and I believe more expect; for it is observable, that for the most part, your only Parliament converts before, are your greatest Parliament Assertors now: But how a poor people defiled

and opposed by power, who can expect the conferment of nothing but punishment, should design an interest in standing to their principles, when they know (some of them at least being very able and prevalent) they might upon their least turning have as large a share in the rewards of the Kingdom as those who now enjoy the greatest, is to me irrational and improbable. The Apostle *Paul* would avoid a lawfull thing rather then offend the scrupling consciences of weak brethrens: what then is their fault, who do unlawfull things, and thereto engage the dijudicating consciences of weak Christians?

Whether both in humane probability, and religious reason, it were not more likely to conduce to Gods glory, to Religions settlement and honour, to Christians union and satisfaction, to the Kingdoms peace, to the prevention of danger, and the safety of all (who have not wickedly out-acted all hopes of safety, and are conscious to themselves that their bucket must sink, whensoever Authorities bucket shall arise) to endeavour ere it be too late, to join Authority and Power, Title and Strength together; that as Power may arm Authority, and render it formidable, so Authority might justifie Power, and make that lawfull? Least when the Title shall be claimed, those who may dislike the vices, and oppose any Tyranny (were they legally authorized) of the claimer, yet should not for *conscience sake* deny his Right; and those who could like well the pretensions of our new Governours (were they justifiably managed) should not adventure for Religions sake to assist their usurpation: Whereby, as by our unwise actions, we have too much justified Malignants actions, and made them our deriders: we may strengthen their hands, and make them our Masters.

I am confident that if the great managers of our new-work, and the violent assertors of this changed Government would but seriously lay these things to heart, it might make them seasonably retract, what they untimely attempted, and rather finde out waies to settle, then further unsettle the Kingdom, rather to satisfie then disturb the peaceable consciences of religious and unbyassed men (*The Lord prevail upon their spirits.*)

Thus have I endeavoured to answer that with a meek, which was written with a peaceable spirit, where I shall professe (if I mistake not my self) to side rather with truth then with any party. What I have hastily spoken I shall submit to the deliberate judgements of more intelligent men: I shall be willing to receive a rebuke wherein I have erred, and ready to yeeld wherein I may receive satisfaction: I hope I have not discovered any turbulency of spirit, but a willingness to examine truth: As I would keep my conscience from being wounded by doubtfull pressures, so I would keep my tongue and pen from wounding others by imbittered expressions: I would not willingly give offence, I hope none will be taken. If it be lawfull for one man to propose, it must be lawfull for other to answer arguments, in reference to satisfaction. It would be too great a burthen to true English spirits, to see one man permitted to stand with a drawn weapon daring all that passe by, and he only faulty that takes up the weapons to answer him: either prevent such darings, or else excuse the provoked. It will be my comfort to give, it will be my advantage to receive satisfaction: howsoever, I shall commit my self,

...people, and so command judgement according to the way they
say.

ROMANES 3. 8.

And not rather as we be slanderously reported, and as some affirm, that we say, Let us
do evill that good may come: whose damnation is just.

ROMANES 13. 25.

Whatsoever is not of faith is sinne.

